MONTANA LEGISLATIVE HISTORY

Chapter 104 19 79

Bill H _____ S 150 Original bill & history / C

H. Committee on Labor and Employment Relations			S. Committee on Labor and Employment Relations		
Hearing Date(s)	Mar 01	✓ C	Hearing Date(s)	Jan 30	✓ C
		C		Feb 01	✓ C
		C			C
		C			C
Date Out	Mar 01	✓ C		Feb 01	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

CHAPTER NO. 104

SENATE BILL NO. 150

INTRODUCED BY MEHRENS, PETERSON, HEALY, HAFFERMAN, R. SMITH, LOWE

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE SENATE

January 18, 1979	Introduced and referred to Committee on Labor and Employment Relations.
February 5, 1979	Committee recommend bill do pass. Report adopted.
February 6, 1979	Printed and placed on members' desks.
February 7, 1979	Motion pass consideration.
February 8, 1979	Motion pass consideration.
February 9, 1979	Second reading, do pass.
February 10, 1979	Considered correctly engrossed.
February 12, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 13, 1979	Introduced and referred to Committee on Labor and Employment Relations.
March 1, 1979	Committee recommend bill be concurred in. Report adopted.
March 2, 1979	Second reading, concurred in.
March 5, 1979	Third reading, concurred in.

IN THE SENATE

March 6, 1979	Returned from second house. Concurred in. Sent to enrolling.
	Reported correctly enrolled.

LC 0268/01

Senate BILL NO. 150

INTRODUCED BY Mahlum Beaman Healy Hoffman Thomas Lowe

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE OCCUPATIONAL DISEASE ACT OF MONTANA; AMENDING SECTIONS 39-71-201, 39-72-102, 39-72-305, 39-72-402, 39-72-405, 39-72-406, 39-72-601, 39-72-602, 39-72-605, 39-72-606, 39-72-608, 39-72-610, 39-72-612, 39-72-703, 39-72-704, AND 39-72-711, MCA; AND REPEALING SECTIONS 39-72-205, 39-72-306 THROUGH 39-72-309, 39-72-501 THROUGH 39-72-508, 39-72-603, 39-72-604, 39-72-702, 39-72-710, AND 39-72-713, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-72-102, MCA, is amended to read:

"39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116(2).

(2) "Child" is as defined in 39-71-116(4).

(3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing ~~any work for remuneration or profit~~ in the normal labor market. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "partial permanent disability".

(4) "Division" is as defined in 39-71-116(5).

(5) "Employee" is as defined in 39-71-118.

(6) "Employer" is as defined in 39-71-117.

(7) "Husband" is as defined in 39-71-116(7).

(8) "Independent contractor" is as defined in 39-71-120.

(9) "Insurer" is as defined in 39-71-116(8). ~~The term includes an employer who is self-insured under compensation plan No. 1.~~

(10) "Invalid" is as defined in 39-71-116(9).

(11) ~~The term "occupational~~ Occupational disease" ~~shall~~ mean means all diseases arising out of or contracted from and in the course of employment.

(12) "Order" is as defined in 39-71-116(10).

(13) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(14) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO_2), characterized by small discrete nodules of fibrous

tissue similarly disseminated throughout both lungs causing the characteristic x-ray pattern and by other variable clinical manifestations.

(15) "Wages" is as defined in 39-71-123(20).

(16) "Wife" is as defined in 39-71-116(21).

(17) "Year" is as defined in 39-71-116(6) and 39-71-116(22)."

Section 2. Section 39-72-305, MCA, is amended to read:

"39-72-305. Right to compensation exclusive remedy -- uninsured employers. (1) The right to recover compensation pursuant to the provisions of this chapter for occupational diseases sustained by an employee and arising out of and in the course of his employment, whether resulting in death or not, ~~shall--be~~ is the exclusive remedy therefor against the an employer ~~electing-to-be-bound--by--and--subject--to--this chapter,--except--as--to-such-employers-as-shall-reject-this chapter-as-provided-herein~~ who is properly insured under the Workers' Compensation Act and the Occupational Disease Act of Montana.

(2) The provisions of the Workers' Compensation Act relating to uninsured employers and benefits due uninsured claimants apply to and are incorporated as part of this chapter."

Section 3. Section 39-72-402, MCA, is amended to read:

"39-72-402. Practice and procedure -- applicability of

Workers' Compensation Act. ~~(1)~~ ~~The~~ Except as otherwise provided in this chapter, the practice and procedure prescribed in the Workers' Compensation Act ~~shall--apply~~ applies to all proceedings under this chapter, ~~except-as hereinafter-otherwise-provided.~~

(2) Sections 39-71-304, 39-71-403, 39-71-406, 39-71-409, 39-71-411 through 39-71-413, and 39-71-742 in the Workers' Compensation Act specifically apply to and are incorporated as part of this chapter."

Section 4. Section 39-72-405, MCA, is amended to read:

"39-72-405. General limitations on payment of compensation to disabled employee -- exceptions. (1) Except as provided for in this section, compensation may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to July 1, 1959.

~~(2)--No-compensation-may-be-paid-for-a--disease,--other than--silicosis--or--due-to-ionizing-radiation,-unless-total disability-results-within-120-days-from-the--last--day--upon which--the-employee-actually-worked-for-the-employer-against whom-compensation-is-claimed.-However,--the--division,--upon good--cause-shown,-may-waive-this-limitation-in-the-interest of-justice,-but-in-any-case-the-period-may-not--be--extended to--more-than-1-year-from-the-date-of-last-employment-by-the employer.~~

(3)(2) Except as provided for in subsection (4) (3) of this section, no compensation may be paid for silicosis unless during the 8 years immediately preceding the disablement the injured employee has been exposed to harmful quantities of silicon dioxide dust for a total period of not less than 1,000 workshifts in employment in this state and unless total disability results within 4 3 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

(4)(3) A silicotic employee who is discharged by his employer to escape liability for silicosis benefits under this chapter is eligible to receive compensation under this chapter when totally disabled if he has 700 actual workshifts since January 1, 1954, for that employer. When any employee in employment on or after January 1, 1959, because he has an occupational disease incurred in and caused by such employment which is not yet disabling, is discharged or transferred from the employment in which he is engaged or when he ceases his employment and it is in fact, as determined by the medical panel, inadvisable for him on account of a nondisabling occupational disease to continue in employment and he suffers wage loss by reason of the discharge, transfer, or cessation, the division may allow compensation on account thereof as it considers just, not exceeding $10,000."

Section 5. Section 39-72-406, MCA, is amended to read:

"39-72-406. General limitations on payment of death benefits -- exceptions. Compensation shall be paid to the beneficiaries of every employee covered by this chapter in cases where death results from an occupational disease arising out of his employment, subject to the following conditions:

(1) Except as provided for in 39-72-405(4)(3), compensation may not be paid when the last day of injurious exposure of the employee to the hazards of the occupational diseases occurred prior to July 1, 1959.

(2) No compensation may be paid for death from silicosis unless during the 8 years immediately preceding the disablement the deceased employee has been exposed to harmful quantities of silicon dioxide dust for a period of not less than 1,000 workshifts in employment in this state.

(3) No compensation may be paid for death from silicosis unless the death results within 4 3 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from silicosis for which compensation has been paid or awarded or for which a claim, compensable but for such death, is on file with the division. In such cases, compensation shall be paid to the

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beneficiaries if death results ~~within 7 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed~~ from the silicosis.

(4) No compensation may be paid for death from any occupational disease, other than silicosis or due to ionizing radiation, unless death results within ~~1 year~~ 3 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from an occupational disease, other than silicosis or ionizing radiation, for which compensation has been paid or awarded or for which a claim, compensable but for such death, is on file with the division. In such cases, compensation shall be paid to the beneficiaries if death results ~~within 3 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed~~ from the occupational disease."

NEW SECTION. Section 6. Benefits for pneumoconiosis. Pneumoconiosis is an occupational disease that is compensable under this chapter. However, any benefits granted a claimant under this chapter for pneumoconiosis must be reduced, but not below zero, by an amount equal to the benefits granted the claimant under any program under federal law that pays benefits for a claimant suffering

disability from pneumoconiosis.

Section 7. Section 39-72-601, MCA, is amended to read:

"39-72-601. ~~Pulmonary specialist and occupational disease medical panels~~ Medical panel. (1) The Montana medical association may, at least annually, certify to the division as ~~pulmonary specialist~~ nominees ~~three~~ 10 or more licensed physicians of the state ~~who shall~~ to serve on the medical panel. At least three of the physicians must have had at the time of certification at least 5 years' practice in the diagnosis, care, and treatment of ~~diseases of the~~ pulmonary ~~tract~~ diseases and the interpretation of x-ray films. ~~thereof and may also certify to the division as occupational disease specialist nominees three or more licensed physicians of the state who have~~ At least three of the physicians must have had at the time of certification qualifications in the diagnosis, care, and treatment of nonpulmonary occupational diseases.

(2) From the ~~two lists~~ list submitted as provided for in this section, the division shall appoint ~~two separate medical panels. One panel is the pulmonary specialist medical panel and the other is the occupational disease medical panels. The division shall appoint from the list of pulmonary specialist nominees three~~ five or more physicians to serve on the ~~pulmonary specialist~~ medical panel. ~~The division shall appoint from the list of occupational disease~~

specialist-nominees-three-or-more-physicians-to-serve-on-the occupational-disease-specialist-medical-panel.

(3) If the Montana medical association fails to submit the two-lists list of nominees as provided for in this section, the division shall appoint as members to of the medical panels-by-appointing--to--the--pulmonary--specialist medical--panel--three panel five or more licensed physicians in the state, of-Montana-who Three of the panel members must have had at the time of appointment at least 5 years' practice in the diagnosis, care, and treatment of pulmonary diseases of-the-pulmonary-tract and the interpretation of x-ray films thereof--and-by-appointing-to-the-occupational disease-medical-panel-three-or-more-licensed--physicians--of the-state-who-have-at-the-time-of-appointment-qualifications to--diagnose,--care-for,-and-treat-nonpulmonary-occupational diseases.

(4) The panel members shall appoint one member of the panel to be the chairman."

Section 8. Section 39-72-602, MCA, is amended to read:

"39-72-602. Procedure Insurer may accept liability -- procedure for medical examination ----pulmonary--conditions when insurer has not accepted liability. (1) An insurer may accept liability for a claim under this chapter based on information submitted to it by a claimant.

(2) In order to determine the compensability of claims

under this chapter based--on-pulmonary-conditions when an insurer has not accepted liability, the following procedure shall must be followed:

(a) The division shall direct the claimant to a pulmonary-specialist--who--is--a member of the pulmonary specialist medical panel for an examination. The pulmonary specialist panel member shall conduct an examination to determine whether the claimant is totally disabled and is suffering from a--pulmonary an occupational disease. The pulmonary--specialist panel member shall submit a report of his findings to the division.

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first pulmonary-specialist panel member, request that the claimant be examined by a second pulmonary-specialist-who-shall-be--a member--of-the-pulmonary-specialist-medical panel member. If a second examination is requested, the division shall direct the claimant to a second pulmonary--specialist--and--the pulmonary--specialist panel member who shall conduct an examination to determine whether he believes the claimant is totally disabled and is suffering from a--pulmonary an occupational disease. The pulmonary-specialist panel member shall submit a report of his findings to the division. When a second examination has been requested, the reports of the examinations shall be submitted to the-pulmonary-specialist

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three members of the medical panel for its review. A medical panel member or the panel may, in order to assist the panel member or the panel in reaching a conclusion, consult with the claimant's attending physician. The three panel members shall issue its a report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

~~(3)~~(c) If a second examination is not requested, the division shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician. If a second examination is requested, the division shall issue its order based on the report of the ~~pulmonary--specialist~~ three members of the medical panel.

(d) For the purpose of reviewing the reports of the examinations and issuing the report under subsection (2)(b), the three members of the medical panel shall be the two members of the panel who examined the claimant and the panel chairman. If the panel chairman has examined the claimant, the panel chairman shall appoint another member of the medical panel to be the third member."

Section 9. Section 39-72-605, MCA, is amended to read:

"39-72-605. When ~~nonpulmonary~~ occupational disease causes death. When an occupational disease ~~other-than-a-pulmonary-disease-causes~~ is claimed to have caused death and

a claim for death benefits is filed therefor, the division shall select at least two physicians who in the division's judgment could properly determine the condition regarding the decedent's death in relation to a possible occupational disease, and the physicians shall examine all available evidence pertaining to the claim and shall make findings and report to the division. The report is prima facie evidence of fact as to the matters therein contained."

Section 10. Section 39-72-606, MCA, is amended to read:

"39-72-606. Autopsy. Upon the filing of a claim for compensation for death caused by an occupational disease where an autopsy is necessary to determine the cause of death, an autopsy shall be ordered by the division. The autopsy shall be made under the supervision of the county coroner. The division may designate a duly licensed physician who is a specialist in such examinations to perform or attend the autopsies and to certify his findings thereon. The findings shall be examined by the physicians submitting ~~reports~~ a report under ~~the---provisions---of 39-72-604--and~~ 39-72-605 before the final ~~reports~~ report under ~~those-sections-are~~ that section is submitted to the division."

Section 11. Section 39-72-608, MCA, is amended to read:

"39-72-608. Payment of medical examination and autopsy expenses. The expense of the first medical examination as provided in 39-72-602 ~~or--39-72-603~~ shall be borne by the insurer. The expense of a reexamination shall be borne by the dissatisfied party requesting the reexamination. The expense of the periodic medical examinations, as provided in 39-72-607, shall be borne by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606, shall be borne by the party requesting the autopsy."

Section 12. Section 39-72-610, MCA, is amended to read:

"39-72-610. Report of and examinations conducted by medical panel ~~final--and--exclusive--medical--evidence--at hearing.~~ (1) At a hearing held before the division or the workers' compensation judge, there is a rebuttable presumption that the report of the medical panel and ~~the--two~~ any medical ~~examinations--conducted~~ examination reports by members of the medical panel are ~~exclusive--and--final--and--no other--medical--evidence--or--additional--medical--examinations are--admissible~~ correct. ~~However,--the--physicians--to--which--the claimant--has--been--referred--as--provided--for--in--39-72-602--or 39-72-603--may,--in--order--to--assist--them--in--reaching--their conclusion,--consult--with--the--claimant's--attending--physician.~~

(2) The claimant or the insurer may present additional

medical information in order to rebut the medical examination report of a panel member or a panel report."

Section 13. Section 39-72-612, MCA, is amended to read:

"39-72-612. Rehearing and appeal to workers' compensation judge. (1) Within 20 days after the division has issued its order of determination as to whether the claimant is entitled to benefits under this chapter, a party may request a rehearing. In order to perfect an appeal to the workers' compensation judge, the appealing party must request a rehearing before the division. The division may grant a rehearing and, if a rehearing is granted, the division's final determination ~~shall~~ may not be issued until after the rehearing. If the division does not grant a rehearing, the division's final determination is issued on the date the rehearing is denied.

(2) Appeals from a final determination of the division shall be made to the workers' compensation judge within 30 days after the division has issued its final determination. The judge, after a hearing held pursuant to 39-71-2903 and 39-71-2904, shall make a final determination concerning the claimant's claim. The judge may overrule the division only on the basis that the division's determination is:

(a) in violation of constitutional or statutory provisions;

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(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

NEW SECTION. Section 14. Costs and attorney fees. (1) If an insurer requests that a hearing be held before the division and the claim is determined compensable by the division after the hearing and the insurer does not appeal the division's decision to the workers' compensation judge, reasonable costs and attorney fees, as determined by the division, shall be paid to the claimant's attorney by the insurer.

(2) If an insurer appeals a decision of the division to the workers' compensation judge or from the judge to the supreme court and the claim is determined compensable, reasonable costs and attorney fees, as determined by the workers' compensation judge, shall be paid to the claimant's attorney by the insurer for proceedings before the division, the workers' compensation judge, and the supreme court.

Section 15. Section 39-72-703, MCA, is amended to

read:

"39-72-703. No compensation for partial disability. No compensation as provided in 39-72-701 ~~or 39-72-702 shall be~~ is payable to an employee who is partially disabled from an occupational disease."

Section 16. Section 39-72-704, MCA, is amended to read:

"39-72-704. Medical and hospital expenses. In addition to the compensation provided by this chapter, ~~the following shall be furnished~~ an employee who becomes either totally or partially disabled from an occupational disease is entitled to receive for treatment of the occupational disease, without limitation as to length of time or dollar amount, reasonable medical services, hospitalization, medicines, and other treatment approved by the division.

~~(1) If an employee becomes totally disabled from an occupational disease, he is entitled to receive, without limitation as to length of time or dollar amount, reasonable medical services, hospitalization, medicines, and such other treatment as may be approved by the division.~~

~~(2) An employee who suffers from an occupational disease as defined in 39-72-102(11) but who is able to continue in employment while being treated therefor is entitled to receive the medical services, treatments, and medicines reasonably required, not exceeding the value of~~

~~$2,500.~~"

Section 17. Section 39-72-711, MCA, is amended to read:

"39-72-711. Lump-sum and compromise settlements. (1) No final and binding award made upon any claim pursuant to this chapter may be converted into a lump-sum payment, in whole or in part, except as provided in this section or 39-72-712.

(2) Whenever there are contested issues as to an insurer's liability for a claim under this chapter, including a claim based on 39-72-405~~(4)~~(3), a claimant and an insurer may enter into a full and final compromise settlement of the claim. However, no such settlements are binding on the parties until approved by the division. After the division approves a full and final compromise settlement, the claim is closed and the insurer's liability for a settled claim is forever released."

Section 18. Section 39-71-201, MCA, is amended to read:

"39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the division must administer are to be paid upon lawful appropriation. The following moneys collected by the

division shall be deposited in the state treasury to the credit of the workers' compensation administrative fund and shall be used for the administrative expenses of the division:

(a) all fees and fines provided in 39-71-205, and 39-71-304~~, and 39-72-205~~;

(b) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state insurance fund. The assessments shall be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, no assessment of the plan No. 1 employer or plan No. 2 insurer shall be less than $200. The assessments shall be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans using proper accounting and cost allocation procedures. Plan No. 3 shall be assessed an amount sufficient to fund its direct costs and an equitable portion

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of the indirect costs as referred to above. Other sources of revenue, including unexpended funds from the preceding fiscal year, shall be used to reduce the costs before levying the assessments.

(2) The administration fund shall be debited with expenses incurred by the division in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the division either within or without the state.

(3) Disbursements from the administration money shall be made after being approved by the division upon claim therefor."

Section 19. Repealer. Sections 39-72-205, 39-72-306 through 39-72-309, 39-72-501 through 39-72-508, 39-72-603, 39-72-604, 39-72-702, 39-72-710, and 39-72-713, MCA, are repealed.

Section 20. Codification. The code commissioner shall codify section 6 of this act in Title 39, chapter 72, part 5, and section 14 of this act in Title 39, chapter 72, part 6, and the provisions of those parts apply, respectively, to section 6 and section 14.

-End-

Senator Dover then moved that Senate Bill #155 Do Pass, as amended, seconded by Senator Aklestad. A vote was then taken and the motion passed.

Chairman Lowe then asked Mr. Grosfield if he had come up with appropriate language for House Bill #32 previously discussed. Mr. Grosfield submitted the following amendment:

Page 5, line 20.
After: "dependents."
Add: "If, after all funds due the victim have been paid to the victim under this section, there remains additional funds in the escrow account, such funds shall be returned to the individual charged or convicted of the crime." (Exhibit "D")

Senator Dover moved that House Bill #32 as amended be passed. Senator Palmer seconded and motion carried with Senator Aklestad dissenting.

Chairman Lowe then asked Mr. Grosfield to explain Senate Bill #150 to the Committee in the absence of Senator Mehrens. Mr. Grosfield's statement is attached as Exhibit "E".

No proponents or opponents appeared on Senate Bill #150.

In view of the fact that Senators Severson and Palmer had to leave during the discussion of this bill, Chairman Lowe felt that the Committee should postpone moving on this bill until all the members were present.

Chairman Lowe then excused himself from the chair and asked Senator Nelson to take over since he was a sponsor and proponent for Senate Bill #161. Senator Lowe then explained Senate Bill 161 to the Committee in that this act provides for a referendum method of resolving an impasse during municipal labor negotiations. If solutions could not be made by negotiations, then the last offer of each side would be put to a vote of the people to decide.

Senator Lowe then introduced Dan Mizner, Executive Director of the League of Cities and Towns. Mr. Mizner stated that Montana needed a better system when negotiations between cities and unions reached a deadlock. He felt that cities and towns could not afford to do without the services of policemen, firemen, etc. He stated that by going through the Board of Personnel Appeals and then the electorate, this system would place the responsibility of wages and fringe benefits upon the people and that the people should have a say in the wages and benefits that public employees should receive since they were the ones who would have to pay for it ultimately. He stated that this approach was working very well in California and Colorado and felt that it would work well for Montana. He indicated that there was a case in Minnesota where a third party arbitration case had been declared unconstitutional.

ROLL CALL

LABOR & EMPLOYMENT RELATIONS COMMITTEE

46TH LEGISLATIVE SESSION - - 1979

Date Jan. 30, 1979

NAME	PRESENT	ABSENT	EXCUSED
HAROLD C. NELSON, VICE CHAIRMAN	✓		
GARY AKLESTAD	✓		
HAROLD L. DOVER	✓		
WILLIAM F. HAFFERMAN	✓		
JOHN (SANDY) MEHRENS			✓
BOB PALMER	✓		
ELMER D. SEVERSON	✓		
RICHARD G. SMITH	✓		
BILL R. LOWE, CHAIRMAN	✓		

Exhibit "E"

MEMORANDUM BY THE DIVISION OF WORKERS' COMPENSATION REGARDING SENATE BILL 150 WHICH PROVIDES FOR THE GENERAL REVISION OF CERTAIN SECTIONS OF THE OCCUPATIONAL DISEASE ACT

The Division of Workers' Compensation, through an advisory council made up of representatives of various interest groups concerned with workers' compensation legislation, proposes the changes as set forth in Senate Bill 150. The Division wishes to explain the reason for the changes in each section of the proposed bill. Reference will be made to the bill's sections numbers.

Section 1. Section 1 amends section 39-72-102 by modifying the definition of disablement. The amendment would provide that disablement be defined as incapacity to perform work in the normal labor market rather than incapacity to perform any work for remuneration or profit. The definition as it now exists is too restrictive and causes undue hardship on certain claimants who may be able to do very limited work, and yet have lost their true earning capacity due to an occupational disease. It is believed that the definition should be more in line with the workings of the Workers' Compensation Act and allow benefits when a claimant is disabled from working in the normal labor market. Subsection 9 would be amended to remove superfluous language concerning self-insurers. The definition of insurer provides that self-insurers are considered insurers under the Workers' Compensation Act. Subsection 11 would be amended in style only and there would be no substantive change in the definition of occupational disease.

Section 2. Section 2 would amend section 39-72-305 by removing language which indicates that an employee may reject coverage under the Occupational Disease Act. Coverage under the Workers' Compensation Act has been made mandatory and employees do not have an election. Coverage under the Occupational Disease Act would also be mandatory, and no rejection should be allowed. The section would also provide that benefits under the Uninsured Employers Fund would apply to occupational disease claims as well as workers' compensation cases. This is merely a clarification of what the Division believes is the current law which would, no doubt, allow a claim for occupational disease benefits under the Uninsured Employers Fund system.

Section 3. Section 3 would amend section 39-72-402 by incorporating by reference various sections in the Workers' Compensation Act to apply to the workings of the Occupational Disease Act. This will allow for the repeal of several duplicate sections in the Montana codes, and will provide for uniformity in the administration of both the Workers' Compensation and Occupational Disease Acts.

Section 4. Section 4 would amend section 39-72-405 by deleting the current subsection 2. The current law is very restrictive and allows benefits only if disability results within 120 days from the last day of employment, subject to the one year extension period. Many occupational diseases cannot be detected until after a year from the last day of employment. Claims under the current Occupational Disease Act may be submitted within three years from the last day of employment. Thus, the Division believes that the three year statute of limitations should apply, rather than the restrictive one year limitation. Subsection 2 is amended to provide for a three year statute of limitation rather than the current four year provision, so that it conforms with the claim filing period. This will provide uniformity throughout the Occupational Disease Act.

Section 5. Section 5 would amend section 39-72-406 by changing the statute of limitation provision to provide uniformity in the provisions of the law regarding time limitation for compensable claims. Also, the amendments would delete restrictive provisions allowing death benefits to beneficiaries of claimants receiving benefits only if death results within certain periods of time from the last day of employment. It is believed that death benefits should be allowed beneficiaries of any individuals suffering an occupational disease no matter when the death occurs. The only requirement for the receipt of death benefits would be that benefits were being paid the deceased claimant at the time of death, and death resulted from an occupational disease.

Section 6. Section 6 would provide a new section concerning benefits for pneumoconiosis. Under the current law, there are very detailed provisions concerning the establishment of pneumoconiosis claims. However, the criteria appears to be outdated, and only very limited benefits are available. The federal government provides for pneumoconiosis benefits. The current law concerning pneumoconiosis will be completely removed and a substitute provision is proposed to be placed in the codes merely stating that benefits paid under the Montana Occupational Disease Act would be reduced by amounts paid to a claimant by the federal government. This would streamline the procedure for determining pneumoconiosis claims under Montana's law, and would provide for a simple system of administering any pneumoconiosis claim in this state. In effect, claims for pneumoconiosis will be processed in the same manner as any other occupational disease claim.

Section 7. Section 7 would amend section 39-72-601 concerning the creation of medical panels by revising the medical panel system under the Occupational Disease Act. Presently, there are two medical panels. One panel reviews pulmonary problems, and the other panel reviews nonpulmonary conditions. The Division is suggesting that the panels be combined into one panel and the membership be increased. The Division has found that most physicians who work in the occupational disease area can do both pulmonary and nonpulmonary examinations and diagnosis. One panel would provide more continuity and would increase the number of individual physicians that the Division may draw from in order to administer the Occupational Disease Act.

Section 8. Section 8 would amend section 39-72-602 by revising the manner in which occupational disease claims are processed. The section would be amended to indicate that only one occupational disease panel is to be utilized rather than the current two panels.

Section 9. Section 9 would amend section 39-72-605 by removing references to "pulmonary" when referring to diseases covered by the law. This will allow for the repeal of section 39-72-604, which provides for the same procedure for nonpulmonary diseases. Thus, the amended section will provide for a uniform system of determination concerning the determination of occupational disease death claims.

Section 10. Section 10 would amend section 39-72-606 by deleting an internal reference to a section that is proposed to be repealed in this revision bill.

Section 11. Section 11 would amend section 39-72-608 by deleting an internal reference to a section that is proposed to be repealed in this revision bill.

Section 12. Section 12 would amend section 39-72-610 by allowing claimants and insurers to submit additional medical evidence at hearings either before the Division or the Workers' Compensation Judge. The basis for this amendment is a

determination by the Workers' Compensation Judge that excluding a claimant's attending physician's testimony is unconstitutional. Thus, the law would be modified to comply with the Judge's determination. Also, the law would allow for a rebuttable presumption that the medical panel's determination is correct. This will give credence to the panel's determination, and yet provide for adequate safeguards to a claimant or insurer regarding additional medical information to be considered by the Division or the Workers' Compensation Judge. The language that has been deleted from the last sentence of the first paragraph of the bill has been placed in section 39-72-602(2)(b).

Section 13. Section 13 would amend section 39-72-612 by providing a specific number of days for appeal of a Division's decision to the Workers' Compensation Judge. Currently, the law does not provide for a specific statute of limitation, and it is believed such a limitation should be set forth in the law. A thirty day period is customary for appeal of cases to a higher tribunal.

Section 14. Section 14 would create a new section which would allow the charging of costs and attorney fees against an insurance carrier if the insurance carrier appeals a Division's decision that is later determined to be a correct decision. If an insurer pursues a course of action that requires a claimant to incur additional costs, such costs should be recoverable by a claimant if the final decision is against the insurer.

Section 15. Section 15 would amend section 39-72-703 by deleting an internal reference to a section that is proposed to be repealed in this revision bill.

Section 16. Section 16 would amend section 39-72-704, concerning medical benefits due a claimant under the Occupational Disease Act by providing for unlimited medical benefits to claimants even though such claimants may be able to continue to work. Currently, the law allows unlimited medical benefits for claimants who are permanently totally disabled from an occupational disease. However, for claimants who are suffering from an occupational disease but can continue in employment, a $2,500 limitation of medical is provided in the law. This limitation is contrary to federal guidelines concerning workers' compensation benefits, and appears to be an unfair limitation. Thus, it is suggested that the limitation be removed and that all claimants who are suffering from occupational diseases be entitled to full medical benefits.

Section 17. Section 17 would amend section 39-72-711 to revise an internal reference to a section number.

Section 18. Section 18 would amend section 39-71-201 by deleting an internal reference to a section that is proposed to be repealed in this revision bill.

Section 19. Section 19 would repeal various sections in the Occupational Disease Act. An explanation of each section to be repealed is set forth below.

Sections 39-72-205, 39-72-306, 39-72-307. These sections duplicate sections in the Workers' Compensation Act. The provisions of these sections will be incorporated by reference to sections in the Workers' Compensation Act as set forth in the proposed amendments to section 39-72-402.

Section 39-72-308. This section provides that there will be no right of suit at common law for employees covered under the Occupational Disease Act except for those employees who reject coverage. The provisions allowing an employee to reject coverage will be removed from the law. Section 39-72-305 provides that occupational disease benefits are the exclusive remedy for employees. Also, the provisions of the Workers' Compensation Act concerning the exclusive remedy issue are being incorporated into the Occupational Disease Act in the amendments to section 39-72-402. Thus, this section will no longer be needed and should be repealed.

Section 39-72-309. This section provides that common law defenses will not be available to employees who do not comply with the coverage requirements of the Occupational Disease Act. The provisions of this section would be taken care of under the amendments to section 39-72-305 providing that the provisions of the Uninsured Employers Fund would apply to the administration of the Occupational Disease Act.

Sections 39-72-501 through 39-72-508. These sections relate to procedures to determine compensation benefits for pneumoconiosis. These sections are outdated and unduly complex, and are proposed to be repealed. Determinations concerning pneumoconiosis will be made in the same manner as determinations are made for other occupational diseases. In effect, a medical panel of experts in the pulmonary area will make the determination regarding any claim for pneumoconiosis. Section 6 of the proposed bill will be a substitute for the provisions in the current law.

Section 39-72-603. This section currently provides for a procedure to determine all pulmonary occupational disease claims. The provisions of this section are being incorporated into the amendments to sections 39-72-601 and 39-72-602.

Section 39-72-604. This section relates to the determination of pulmonary occupational disease death claims. This section is being merged with section 39-72-605. Thus, an unneeded duplicate section is being removed from the Montana codes.

Section 39-72-702. This section concerns benefit payments for individuals suffering pneumoconiosis, or beneficiaries of deceased individuals suffering from pneumoconiosis. Under the new law, benefit provisions for pneumoconiosis will be provided for in proposed section 39-72-509.

Section 39-72-710. This section is a duplicate to a section found in the Workers' Compensation Act. The provisions of this section will be incorporated by reference, as set forth in section 39-72-402, to the duplicate section in the Workers' Compensation Act.

Section 39-72-713. This section is a duplicate to a section found in the Workers' Compensation Act. The provisions of this section will be incorporated by reference, as set forth in section 39-72-402, to the duplicate section in the Workers' Compensation Act.

If anyone has questions concerning the proposed bill, please feel free to contact Mr. Norman H. Grosfield, Administrator of the Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601, phone 449-2047.

NHG/nmb

SB-150-161

SENATE Labor & Empl. Rels. COMMITTEE

BILL HB-52

VISITORS' REGISTER

DATE 1-30-79

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPP
Norman Grosfield	Div of Workers' Comp	SB 150 HB 32	X	
Dave Stiteler	PERSONNEL DIVISION	SB 161		
James J. Burgess	Div of Workers' Comp	SB 150 HB 32	X	
Bob Jensen	Board of Personnel Appeals	SB-161		
Dan McGinley	Butte-Silver Bow	SB-161		X
Pat McKittrick	J.C. Teamsters No 2	SB-161		X
Eileen Robbins	MONT. LEAGUE ASSOC.	SB161		X
Maurice Mulcahy	A.F.S.C.M.E. A.F.L.-C.I.O. M.P.P.A.	SB 161		X
Jim Murray	Mont. St. Fed. AFL-CIO	SB 161		X
" "	" " " "	SB 150	X	
Lee Nelson	MT State Employees Assn	SB 161		
[illegible]	Operating Engineers, Local			

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

NAME: Jim Murry DATE: 1-30-79

ADDRESS: P.O. Box 1176 Helena, Mont.

PHONE: 442-1708

REPRESENTING WHOM? Mont. State AFL-CIO

APPEARING ON WHICH PROPOSAL: SB 150

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Senator Pavlovich then introduced Mr. Harold V. Kansier, Deputy Administrator of the Unemployment Insurance Bureau of the Department of Labor and Industry. Mr. Kansier explained that primarily the changes would allow the penalties collected to be placed into the unemployment compensation trust fund instead of a non-interest bearing fund.

Since there were no proponents or opponents, Senator Dover moved the bill and Senator Aklestad seconded, and the bill was passed unanimously.

Senator Dover then moved that House Bill #31 be placed on the Consent Calendar and the Committee so moved unanimously.

Chairman Lowe then asked the Committee to vote on Senate Bill #150 heard at a previous meeting. Senator Mehrens moved to pass the bill and the Committee voted unanimously to pass this bill.

Chairman Lowe then asked Senator Palmer if it would too great an inconvenience to reschedule his bill, Senate Bill #266 to February 6th as there was only one bill scheduled for Saturday, to which Senator Palmer voiced no objection.

There being no further business, the Committee adjourned at 2:00 p.m.

William R. Lowe

Senator William R. Lowe

ROLL CALL

LABOR & EMPLOYMENT RELATIONS COMMITTEE

46TH LEGISLATIVE SESSION - - 1979

Date 2-1-79

NAME	PRESENT	ABSENT	EXCUSE
HAROLD C. NELSON, VICE CHAIRMAN	✓		
GARY AKLESTAD	✓		
HAROLD L. DOVER	✓		
WILLIAM F. HAFFERMAN	✓		
JOHN (SANDY) MEHRENS	✓		
BOB PALMER	✓		
ELMER D. SEVERSON	✓		
RICHARD G. SMITH	✓		
BILL R. LOWE, CHAIRMAN	✓		

Attach to minutes each day.

STANDING COMMITTEE REPORT

February 1 19 79

MR. President:

We, your committee on Labor & Employment Relations

having had under consideration Senate Bill No. 150

Respectfully report as follows: That Senate Bill No. 150

introduced bill unanimously passed.

DO PASS

Chairman.

Senator William R. Love.

STATE PUB. CO.
Helena, Mont.

relation to CETA.

Proponent, Dave Goss, City of Billings, said city managers move around from state to state, and the bill would allow them to stay with one retirement program.

Other proponents were Jim Turcotte, PERD, and Beverly Givson, Montana Association of Counties. The only opponent was Don Judge, AFSCME, AFL-CIO. Questions were asked by the committee.

SENATE BILL 150: Senator Mehrens, sponsor, introduced Norm Grosfield, who further explained the bill (exhibit 17).

Proponents were: Stephen Williams, Anaconda Co., George Wood, and James Murry, AFL-CIO, said they want to go on record in support of SB 150 and urged the committee to give a DO PASS recommendation.

EXECUTIVE SESSION

SENATE BILL 150: A motion was made by Rep. Harper that SB 150 BE CONCURRED IN. Motion carried unanimously.

SENATE BILL 190: It was moved by Rep. Harrington that SB 190 BE CONCURRED IN. Motion carried unanimously.

Meeting adjourned at 2:00 p.m.

J. Melvin Williams, Chairman

Lois South, Secretary

SENATE BILL NO. 150

INTRODUCED BY MEHRENS, PETERSON, HEALY, HAFFERMAN, R. SMITH, LOWE

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE OCCUPATIONAL DISEASE ACT OF MONTANA; AMENDING SECTIONS 39-71-201, 39-72-102, 39-72-305, 39-72-402, 39-72-405, 39-72-406, 39-72-601, 39-72-602, 39-72-605, 39-72-606, 39-72-608, 39-72-610, 39-72-612, 39-72-703, 39-72-704, AND 39-72-711, MCA; AND REPEALING SECTIONS 39-72-205, 39-72-306 THROUGH 39-72-309, 39-72-501 THROUGH 39-72-508, 39-72-603, 39-72-604, 39-72-702, 39-72-710, AND 39-72-713, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-72-102, MCA, is amended to read:

"39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116(2).

(2) "Child" is as defined in 39-71-116(4).

(3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing any work ~~for-remuneration-or--profit~~ in the normal labor market. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "partial permanent disability".

(4) "Division" is as defined in 39-71-116(5).

(5) "Employee" is as defined in 39-71-118.

(6) "Employer" is as defined in 39-71-117.

(7) "Husband" is as defined in 39-71-116(7).

(8) "Independent contractor" is as defined in 39-71-120.

(9) "Insurer" is as defined in 39-71-116(8). ~~The-term includes-an-employer-who-is-self-insured-under--compensation plan-No.-1.~~

(10) "Invalid" is as defined in 39-71-116(9).

(11) ~~The-term "occupational~~ Occupational disease" ~~shall~~ mean means all diseases arising out of or contracted from and in the course of employment.

(12) "Order" is as defined in 39-71-116(10).

(13) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(14) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide

REFERENCE BILL

(SiO2), characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs causing the characteristic x-ray pattern and by other variable clinical manifestations.

(15) "Wages" is as defined in 39-71-116(20).

(16) "Wife" is as defined in 39-71-116(21).

(17) "Year" is as defined in 39-71-116(6) and 39-71-116(22)."

Section 2. Section 39-72-305, MCA, is amended to read:

"39-72-305. Right to compensation exclusive remedy -- uninsured employers. (1) The right to recover compensation pursuant to the provisions of this chapter for occupational diseases sustained by an employee and arising out of and in the course of his employment, whether resulting in death or not, ~~shall--be~~ is the exclusive remedy therefor against the an employer ~~electing-to-be-bound--by--and--subject--to--this chapter,--except--as--to-such-employees-as-shall-reject-this chapter-as-provided-herein~~ who is properly insured under the Workers' Compensation Act and the Occupational Disease Act of Montana.

(2) The provisions of the Workers' Compensation Act relating to uninsured employers and benefits due uninsured claimants apply to and are incorporated as part of this chapter."

Section 3. Section 39-72-402, MCA, is amended to read:

"39-72-402. Practice and procedure -- applicability of Workers' Compensation Act. ~~(1) The~~ Except as otherwise provided in this chapter, the practice and procedure prescribed in the Workers' Compensation Act ~~shall--apply~~ applies to all proceedings under this chapter, ~~except-as hereinafter-otherwise-provided.~~

(2) Sections 39-71-304, 39-71-403, 39-71-406, 39-71-409, 39-71-411 through 39-71-413, and 39-71-742 in the Workers' Compensation Act specifically apply to and are incorporated as part of this chapter."

Section 4. Section 39-72-405, MCA, is amended to read:

"39-72-405. General limitations on payment of compensation to disabled employee -- exceptions. (1) Except as provided for in this section, compensation may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to July 1, 1959.

~~(2)--No-compensation-may-be-paid-for-a--disease,--other than--silicosis--or--due-to-ionizing-radiation,-unless-total disability-results-within-120-days-from-the--last--day--upon which--the-employee-actually-worked-for-the-employer-against whom-compensation-is-claimed.-However,--the--division,--upon good--cause-shown,-may-waive-this-limitation-in-the-interest of-justice,-but-in-any-case-the-period-may-not--be--extended to--more-than-1-year-from-the-date-of-last-employment-by-the~~

employer.

~~(3)~~(2) Except as provided for in subsection ~~(4)~~ (3) of this section, no compensation may be paid for silicosis unless during the 8 years immediately preceding the disablement the injured employee has been exposed to harmful quantities of silicon dioxide dust for a total period of not less than 1,000 workshifts in employment in this state and unless total disability results within ~~4~~ 3 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

~~(4)~~(3) A silicotic employee who is discharged by his employer to escape liability for silicosis benefits under this chapter is eligible to receive compensation under this chapter when totally disabled if he has 700 actual workshifts since January 1, 1954, for that employer. When any employee in employment on or after January 1, 1959, because he has an occupational disease incurred in and caused by such employment which is not yet disabling, is discharged or transferred from the employment in which he is engaged or when he ceases his employment and it is in fact, as determined by the medical panel, inadvisable for him on account of a nondisabling occupational disease to continue in employment and he suffers wage loss by reason of the discharge, transfer, or cessation, the division may allow compensation on account thereof as it considers just, not

exceeding $10,000."

Section 5. Section 39-72-406, MCA, is amended to read:

"39-72-406. General limitations on payment of death benefits -- exceptions. Compensation shall be paid to the beneficiaries of every employee covered by this chapter in cases where death results from an occupational disease arising out of his employment, subject to the following conditions:

(1) Except as provided for in 39-72-405~~(4)~~(3), compensation may not be paid when the last day of injurious exposure of the employee to the hazards of the occupational diseases occurred prior to July 1, 1959.

(2) No compensation may be paid for death from silicosis unless during the 8 years immediately preceding the disablement the deceased employee has been exposed to harmful quantities of silicon dioxide dust for a period of not less than 1,000 workshifts in employment in this state.

(3) No compensation may be paid for death from silicosis unless the death results within ~~4~~ 3 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from silicosis for which compensation has been paid or awarded or for which a claim, compensable but for such death, is on file with the

division. In such cases, compensation shall be paid to the beneficiaries if death results ~~within 7 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed~~ from the silicosis.

(4) No compensation may be paid for death from any occupational disease, other than silicosis or due to ionizing radiation, unless death results within ~~1 year~~ 3 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from an occupational disease, other than silicosis or ionizing radiation, for which compensation has been paid or awarded or for which a claim, compensable but for such death, is on file with the division. In such cases, compensation shall be paid to the beneficiaries if death results ~~within 3 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed~~ from the occupational disease."

NEW SECTION. Section 6. Benefits for pneumoconiosis. Pneumoconiosis is an occupational disease that is compensable under this chapter. However, any benefits granted a claimant under this chapter for pneumoconiosis must be reduced, but not below zero, by an amount equal to the benefits granted the claimant under any program under

federal law that pays benefits for a claimant suffering disability from pneumoconiosis.

Section 7. Section 39-72-601, MCA, is amended to read:

"39-72-601. ~~Pulmonary---specialist---and--occupational disease--medical--panels~~ Medical panel. (1) The Montana medical association may, at least annually, certify to the division as ~~pulmonary-specialist~~ nominees three 10 or more licensed physicians of the state ~~who shall~~ to serve on the medical panel. At least three of the physicians must have had at the time of certification at least 5 years' practice in the diagnosis, care, and treatment of ~~diseases--of--the~~ pulmonary ~~tract~~ diseases and the interpretation of x-ray films. ~~thereof and may--also--certify--to--the--division--as occupational--disease--specialist--nominees--three--or--more licensed-physicians-of-the-state-who-have~~ At least three of the physicians must have had at the time of certification qualifications in the diagnosis, care, and treatment of nonpulmonary occupational diseases.

(2) From the ~~two lists~~ list submitted as provided for in this section, the division shall appoint ~~two--separate medical--panels.--One--panel--is--the--pulmonary--specialist medical-panel-and-the--other--is--the--occupational--disease medical--panel.--The-division-shall-appoint-from-the-list-of pulmonary-specialist-nominees-three~~ five or more physicians to serve on the ~~pulmonary--specialist~~ medical panel. ~~The~~

division shall appoint from the list of occupational disease specialist nominees three or more physicians to serve on the occupational disease specialist medical panel.

(3) If the Montana medical association fails to submit the two lists list of nominees as provided for in this section, the division shall appoint as members to of the medical panels by appointing to the pulmonary specialist medical panel three panel five or more licensed physicians in the state, of Montana who Three of the panel members must have had at the time of appointment at least 5 years' practice in the diagnosis, care, and treatment of pulmonary diseases of the pulmonary tract and the interpretation of x-ray films thereof and by appointing to the occupational disease medical panel three or more licensed physicians of the state who have at the time of appointment qualifications to diagnose, care for, and treat nonpulmonary occupational diseases.

(4) The panel members shall appoint one member of the panel to be the chairman."

Section 8. Section 39-72-602, MCA, is amended to read:

"39-72-602. Procedure Insurer may accept liability -- procedure for medical examination ---pulmonary conditions when insurer has not accepted liability. (1) An insurer may accept liability for a claim under this chapter based on information submitted to it by a claimant.

(2) In order to determine the compensability of claims under this chapter based on pulmonary conditions when an insurer has not accepted liability, the following procedure shall must be followed:

(a) The division shall direct the claimant to a pulmonary specialist who is a member of the pulmonary specialist medical panel for an examination. The pulmonary specialist panel member shall conduct an examination to determine whether the claimant is totally disabled and is suffering from a pulmonary an occupational disease. The pulmonary specialist panel member shall submit a report of his findings to the division.

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first pulmonary specialist panel member, request that the claimant be examined by a second pulmonary specialist who shall be a member of the pulmonary specialist medical panel member. If a second examination is requested, the division shall direct the claimant to a second pulmonary specialist and the pulmonary specialist panel member who shall conduct an examination to determine whether he believes the claimant is totally disabled and is suffering from a pulmonary an occupational disease. The pulmonary specialist panel member shall submit a report of his findings to the division. When a second examination has been requested, the reports of the

examinations shall be submitted to ~~the pulmonary specialist~~ three members of the medical panel for ~~its~~ review. A medical panel member or the panel may, in order to assist the panel member or the panel in reaching a conclusion, consult with the claimant's attending physician. The three panel members shall issue ~~its~~ a report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

~~(3)~~(c) If a second examination is not requested, the division shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician. If a second examination is requested, the division shall issue its order based on the report of the ~~pulmonary--specialist~~ three members of the medical panel.

(d) For the purpose of reviewing the reports of the examinations and issuing the report under subsection (2)(b), the three members of the medical panel shall be the two members of the panel who examined the claimant and the panel chairman. If the panel chairman has examined the claimant, the panel chairman shall appoint another member of the medical panel to be the third member."

Section 9. Section 39-72-605, MCA, is amended to read:

"39-72-605. When ~~nonpulmonary~~ occupational disease causes death. When an occupational disease ~~other than a~~

~~pulmonary disease causes~~ is claimed to have caused death and a claim for death benefits is filed therefor, the division shall select at least two physicians who in the division's judgment could properly determine the condition regarding the decedent's death in relation to a possible occupational disease, and the physicians shall examine all available evidence pertaining to the claim and shall make findings and report to the division. The report is prima facie evidence of fact as to the matters therein contained."

Section 10. Section 39-72-606, MCA, is amended to read:

"39-72-606. Autopsy. Upon the filing of a claim for compensation for death caused by an occupational disease where an autopsy is necessary to determine the cause of death, an autopsy shall be ordered by the division. The autopsy shall be made under the supervision of the county coroner. The division may designate a duly licensed physician who is a specialist in such examinations to perform or attend the autopsies and to certify his findings thereon. The findings shall be examined by the physicians submitting ~~reports~~ a report under ~~the provisions of 39-72-604 and~~ 39-72-605 before the final ~~reports~~ report under ~~those sections are~~ that section is submitted to the division."

Section 11. Section 39-72-608, MCA, is amended to

read:

"39-72-608. Payment of medical examination and autopsy expenses. The expense of the first medical examination as provided in 39-72-602 ~~or--39-72-603~~ shall be borne by the insurer. The expense of a reexamination shall be borne by the dissatisfied party requesting the reexamination. The expense of the periodic medical examinations, as provided in 39-72-607, shall be borne by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606, shall be borne by the party requesting the autopsy."

Section 12. Section 39-72-610, MCA, is amended to read:

"39-72-610. Report of and examinations conducted by medical panel ~~final--and--exclusive--medical--evidence--at hearing~~. (1) At a hearing held before the division or the workers' compensation judge, there is a rebuttable presumption that the report of the medical panel and ~~the-two~~ any medical ~~examinations--conducted~~ examination reports by members of the medical panel are ~~exclusive-and-final-and--no other--medical--evidence--or-additional-medical-examinations are-admissible~~ correct. ~~However,-the-physicians-to-which-the claimant-has-been-referred-as-provided-for-in--39-72-602--or 39-72-603--may,--in--order--to-assist-them-in-reaching-their conclusion,-consult-with-the-claimant's-attending-physician,~~

(2) The claimant or the insurer may present additional medical information in order to rebut the medical examination report of a panel member or a panel report."

Section 13. Section 39-72-612, MCA, is amended to read:

"39-72-612. Rehearing and appeal to workers' compensation judge. (1) Within 20 days after the division has issued its order of determination as to whether the claimant is entitled to benefits under this chapter, a party may request a rehearing. In order to perfect an appeal to the workers' compensation judge, the appealing party must request a rehearing before the division. The division may grant a rehearing and, if a rehearing is granted, the division's final determination ~~shall~~ may not be issued until after the rehearing. If the division does not grant a rehearing, the division's final determination is issued on the date the rehearing is denied.

(2) Appeals from a final determination of the division shall be made to the workers' compensation judge within 30 days after the division has issued its final determination. The judge, after a hearing held pursuant to 39-71-2903 and 39-71-2904, shall make a final determination concerning the claimant's claim. The judge may overrule the division only on the basis that the division's determination is:

(a) in violation of constitutional or statutory

provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

NEW SECTION. Section 14. Costs and attorney fees. (1) If an insurer requests that a hearing be held before the division and the claim is determined compensable by the division after the hearing and the insurer does not appeal the division's decision to the workers' compensation judge, reasonable costs and attorney fees, as determined by the division, shall be paid to the claimant's attorney by the insurer.

(2) If an insurer appeals a decision of the division to the workers' compensation judge or from the judge to the supreme court and the claim is determined compensable, reasonable costs and attorney fees, as determined by the workers' compensation judge, shall be paid to the claimant's attorney by the insurer for proceedings before the division, the workers' compensation judge, and the supreme court.

Section 15. Section 39-72-703, MCA, is amended to read:

"39-72-703. No compensation for partial disability. No compensation as provided in 39-72-701 ~~or 39-72-702 shall be~~ is payable to an employee who is partially disabled from an occupational disease."

Section 16. Section 39-72-704, MCA, is amended to read:

"39-72-704. Medical and hospital expenses. In addition to the compensation provided by this chapter, ~~the following shall be furnished~~ an employee who becomes either totally or partially disabled from an occupational disease is entitled to receive for treatment of the occupational disease, without limitation as to length of time or dollar amount, reasonable medical services, hospitalization, medicines, and other treatment approved by the division.

~~(1) If an employee becomes totally disabled from an occupational disease, he is entitled to receive, without limitation as to length of time or dollar amount, reasonable medical services, hospitalization, medicines, and such other treatment as may be approved by the division.~~

~~(2) An employee who suffers from an occupational disease as defined in 39-72-102(11) but who is able to continue in employment while being treated therefor is entitled to receive the medical services, treatments, and~~

~~medicines-reasonably-required,-not-exceeding--the--value--of $2,500.~~"

Section 17. Section 39-72-711, MCA, is amended to read:

"39-72-711. Lump-sum and compromise settlements. (1) No final and binding award made upon any claim pursuant to this chapter may be converted into a lump-sum payment, in whole or in part, except as provided in this section or 39-72-712.

(2) Whenever there are contested issues as to an insurer's liability for a claim under this chapter, including a claim based on 39-72-405~~(4)~~(1), a claimant and an insurer may enter into a full and final compromise settlement of the claim. However, no such settlements are binding on the parties until approved by the division. After the division approves a full and final compromise settlement, the claim is closed and the insurer's liability for a settled claim is forever released."

Section 18. Section 39-71-201, MCA, is amended to read:

"39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the division must administer are to be paid upon

lawful appropriation. The following moneys collected by the division shall be deposited in the state treasury to the credit of the workers' compensation administrative fund and shall be used for the administrative expenses of the division:

(a) all fees and fines provided in 39-71-205, and 39-71-304~~, and 39-72-205~~;

(b) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state insurance fund. The assessments shall be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, no assessment of the plan No. 1 employer or plan No. 2 insurer shall be less than $200. The assessments shall be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans using proper accounting and cost allocation procedures. Plan No. 3 shall be assessed an amount

sufficient to fund its direct costs and an equitable portion of the indirect costs as referred to above. Other sources of revenue, including unexpended funds from the preceding fiscal year, shall be used to reduce the costs before levying the assessments.

(2) The administration fund shall be debited with expenses incurred by the division in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the division either within or without the state.

(3) Disbursements from the administration money shall be made after being approved by the division upon claim therefor."

Section 19. Repealer. Sections 39-72-205, 39-72-306 through 39-72-309, 39-72-501 through 39-72-508, 39-72-603, 39-72-604, 39-72-702, 39-72-710, and 39-72-713, MCA, are repealed.

Section 20. Codification. The code commissioner shall codify section 6 of this act in Title 39, chapter 72, part 5, and section 14 of this act in Title 39, chapter 72, part 6, and the provisions of those parts apply, respectively, to section 6 and section 14.

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